

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

Wilkowitz
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FILE: B-208627

DATE: September 16, 1983

MATTER OF: Edward B. Reese--Damage to Personal Property

DIGEST: Customs Service employee submitted claim under Military Personnel and Civilian Employees' Claims Act for loss and damage incident to change of duty station. Customs allowed portion representing loss or damage to personal property but disallowed motel and meal expenses. Customs subsequently received settlement check from carrier's insurance company. Since record clearly shows that insurance settlement did not include motel and meal expenses but represented only allowances on items of personal property, claimant is not entitled to receive any portion of the insurance settlement. Customs may retain the proceeds for credit to appropriation used to pay original claim.

The United States Customs Service, Department of the Treasury, has sought our opinion as to the proper disposition of a check received from a carrier in connection with a claim by Mr. Edward B. Reese, a Customs employee stationed in Houston, Texas. Specifically, Customs asks whether it may pay a portion of the proceeds over to Mr. Reese and, if not, how it should dispose of the check. For the reasons that follow, we conclude that Customs should retain the entire proceeds of the check, for credit to the appropriation it used to pay Mr. Reese's original claim.

Facts

In 1979, Mr. Reese filed a claim with the Customs Service under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 3721 (formerly 31 U.S.C. § 241), for losses incurred incident to an official duty station relocation. The amount of the claim was \$3,221.09, consisting of \$2,784.78 for loss and damage to personal property, and \$436.31 for motel and meal expenses occasioned by the carrier's delays. Customs settled the claim in November 1979, allowing \$2,725.82, which it determined to be the maximum amount allowable under the statute. We understand that the difference between the amount claimed and the amount allowed consists essentially of the motel and meal expenses, with the balance representing adjustments to the valuation of various items of personal property.

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Under 31 U.S.C. § 3721, each agency is free to issue its own implementing regulations. Treasury regulations (31 C.F.R. § 4.7) require an employee, where applicable, to file a claim with the carrier prior to or at least concurrent with filing the claim with the agency. The regulations further provide that, upon payment of a claim by the agency, the claimant will assign his third-party claim to the United States to the extent of that payment. 31 C.F.R. § 4.7(d). Mr. Reese had complied with this regulation and had filed a claim against the carrier shortly after incurring the loss. When initial attempts to recover from the carrier proved unproductive, Mr. Reese filed his claim with Customs and, as noted above, was paid.

Subsequently, the carrier's insurance company, International Claims Service, forwarded a settlement check to Mr. Reese in the amount of \$2,230.23. Pursuant to the regulations, Mr. Reese indorsed the check over to the Customs Service.^{1/} The carrier's bankruptcy has apparently made further recovery impossible. Noting that Mr. Reese has not been compensated for the full amount of his loss, Customs asks whether it may now pay Mr. Reese an additional \$495.27 out of the insurance check, representing the difference between the amount of the claim and the amount Customs originally allowed.

Discussion

The Military Personnel and Civilian Employees' Claims Act provides Federal employees a remedy to recover up to \$25,000 "for damage to, or loss of, personal property [incurred] incident to service." 31 U.S.C. § 3721(b). As is evidenced by this case, claims made under this Act frequently arise from loss or damage to employees' household belongings incurred during transit incident to a change of duty station. In these cases, the effect of the Act is to provide reimbursement to an injured employee for that portion of a sustained loss which may not otherwise be recoverable from a carrier or a carrier's insurer. In essence, the fundamental purpose of the Act is to permit, within the parameters set forth in the Act, the injured employee to be made "whole" where recovery from other sources would be insufficient to accomplish this end.

^{1/} "After payment of his claim by the United States, if the claimant receives any payment from a carrier, contractor, insurer, or other third party, he will pay the proceeds to the United States to the extent of the payment received by him from the United States." 31 C.F.R. § 4.7(e).

In this regard, the benefits provided by the Act have been viewed as being "comparable to those received under a normal insurance policy." Anton v. Greyhound Van Lines, Inc., 591 F.2d 103, 109 (1st Cir. 1978). Similar to typical insurance policies, recovery under this Act is not contingent upon a showing by the employee that the alleged damage or loss resulted from wrongdoing or negligence. Rather, the employee need only show that the damage or loss occurred and that it did not result from wrongdoing or negligence on his part. Anton v. Greyhound Van Lines, supra, at 109. Moreover, recovery under this Act does not extinguish any claims the employee may have against third parties. In situations where a third party may be liable and recovery from that party may or may not be forthcoming, the Act provides employees a secondary means of recovery similar to that provided by a personal insurance policy.

In some cases, the statute may permit an employee to be compensated for covered losses in addition to an amount recovered from a third party. However, an employee is not entitled to be compensated twice for the same thing. Thus, the treatment of third-party recoveries depends on (1) the precise nature of the recovery, and (2) its relationship to the amount of the loss, the amount already allowed by the agency, and the statutory ceiling.

For example, if an employee incurs a loss which exceeds the \$25,000 statutory ceiling, is paid the full \$25,000 by his agency, and there is then a recovery from a third party, the employee may share in that recovery up to the difference between \$25,000 and the amount of the loss, with any balance payable to the agency.^{2/} The result would be the same if the employee had received the third-party recovery before filing the claim with the agency under 31 U.S.C. § 3721. Naturally, however, if the loss is less than \$25,000 and is paid in full by the agency, any third-party recovery is payable to the Government.

The examples in the preceding paragraph assume that the loss is entirely compensable under 31 U.S.C. § 3721, or would be but for the monetary ceiling. If a claim includes elements that are not properly cognizable under the statute, such as damage to real property or damage occurring in certain residential quarters, the treatment of third-party recoveries must take this into consideration. The statute permits full recovery up to the monetary ceiling, but only with respect to cognizable losses.

This is precisely what happened in the case of Mr. Reese. The amount Customs allowed did not cover the full amount of his loss not

^{2/} This is what happened in the Anton case cited in the text.

because of the statutory ceiling but because his claim included elements that were not loss or damage to personal property, specifically the motel and meal expenses.^{3/}

When Customs paid Mr. Reese's claim, it became the assignee of Mr. Reese's claim against the carrier to the extent of that payment. 31 C.F.R. § 4.7(d). If there were any evidence that the insurance company's settlement included an amount for the motel and meal expenses, there might be some basis for permitting Mr. Reese to retain that portion of the recovery on the theory that it was not encompassed by the assignment.

Here, however, the opposite is true. The itemized schedule accompanying the insurance company's settlement check clearly indicates that the entire \$2,230.23 represented allowances on the items of lost or damaged personal property. Thus, we think the situation is governed squarely by the Treasury regulations. The entire amount of the settlement check was within the scope of the assignment mandated by 31 C.F.R. § 4.7(d), was properly turned over to Customs as required by 31 C.F.R. § 4.7(e), and there is no basis for paying any portion of it to the claimant.

Finally, the proceeds of the check need not be deposited in the Treasury as miscellaneous receipts (31 U.S.C. § 3302), but may be retained by Customs for credit to the appropriation used to pay the original claim. 61 Comp. Gen. 537 (1982).

for 
Comptroller General
of the United States

^{3/} We express no opinion as to whether these items may be compensable under any other authority. We are dealing here solely with 31 U.S.C. § 3721.